140-177

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1888.

No. ~~978~~. 645 339

THE UNITED STATES, APPELLANT,

vs.

ROBERT BARBER.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE DISTRICT OF ALABAMA.

FILED FEBRUARY 29, 1888.

SUPREME COURT OF THE UNITED STATES.

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1 . 348. *Petition for fees and services as commissioner at Montgomery, Ala., during* 1886 *and* 1887.

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER
against
THE UNITED STATES. } No. 348. Filed June 24th, 1887.

To the honorable the district court of the United States in and for the middle district of Alabama, and to the judge of said court, your petitioner, Robert Barber, a citizen of the United States, and resident of Montgomery County, in the State of Alabama, and in said middle district of Alabama, whose post-office address is Montgomery, in said county and State, respectfully shows:

That he is a commissioner of the circuit court of the United States for said middle district of Alabama, and that he was such commissioner, duly appointed, qualified, and acting, from the 29th day of December, A. D. 1881, to the 24th day of June, A. D. 1887, both inclusive:

That at divers times during his term of office, your petitioner, as such commissioner, performed for and on behalf and at the instance and request of the United States certain services in the prosecution and in the arresting and holding to bail of persons charged with violating the penal laws of the United States. A schedule of such services is herein fully set forth. And your petitioner avers that such services were each and all actually and necessarily performed by him as herein stated and charged.

Your petitioner further avers that, under and pursuant to the provisions of section 847 of the Revised Statutes of the United States, he is and was entitled to receive from and be paid by the defendant the several sums hereinafter set opposite the several items of charges for said services performed by him as aforesaid.

The items of said services, together with the dates and the names of the persons charged with such violations of law, and of the offenses with which they were charged, and the fees which your petitioner became entitled to demand and receive from and to be paid by the defendant therefor, are as follows, to wit:

No. 1.	Date.	Defendant.	Charge.	Service.	Fees.
	1885.				
1	Oct. 5	James Stafford	In each case, violating section 2461, Revised Statutes of the United States.	In each case, making and certifying deposition of witness to ground complaint, 4 folios, $0.80; copy do., $0.40; oath do., 10c.; filing do., $0.10.	1.20
2	Oct. 16	Thomas Gooding	"	"	1.20
3	Sep. 21	Jack Weeks	"	"	1.20
4	Oct. 5	John Ross	"	"	1.20
5	Oct. 16	Thomas Crane	"	"	1.20
6	Oct. 12	Perry Wilson	"	"	1.20
7	Oct. 5	George Wright	"	"	1.20
8	Oct. 12	"	"	"	1.20
9	Oct. 12	"	"	"	1.20
10	Nov. 10	"	"	"	1.20
11	Oct. 5	"	"	"	1.20
12	Oct. 12	"	"	"	1.20
13	Sept. 21	John Stafford	"	"	1.20
14	Sept. 21	Jesse Royal	"	"	1.20
15	Sept. 21	William Jones	"	"	1.20
16	Oct. 5	John Stafford	"	"	1.20
17	Sept. 21	William King	"	"	1.20

No.	Date.	Defendant.	Charge.	Service.	Fees.
	1885.				
18	Oct. 5	William King	In each case, violating section 2461, Revised Statutes of the United States.	In each case, making and certifying deposition of witness to ground complaint, 4 folios, $1.60; copy do., $0.40; oath do., 10c; filing do., $0.10.	1.20
19	July 31	John Butler	"	"	1.20
20	Oct. 16	Mack Henry	"	"	1.20
21	Oct. 5	Ed King	"	"	1.20
22	Oct. 5	Thomas Sheffield	"	"	1.20
23	Sept. 21	John Collingsworth	"	"	1.20
24	Oct. 16	William Jones	"	"	1.20
	1886.				
25	Mch. 11	Manly Townsend	"	"	1.20
26	Mch. 11	J. N. McDuffie	"	"	1.20
27	Mch. 11	Jesse Bell	"	"	1.20
28	Apl. 26	Chesley Thompson	"	"	1.20
[2]	1885.				
29	Oct. 5	Thomas Appling	"	"	1.20
30	Nov. 12	M. A. D. Wise	"	"	1.20
31	Nov. 10	D. Willingham	"	"	1.20
	1886.				
32	Mch. 13	J. Robinson	"	" complt., 60c	1.20
33	Jnl. 29	John Paulk	"	" oath, 10c	.80
34	Aug. 3	Thomas Mosley et als	"	" filing, 10c	.80
					$40.00

All of the papers in cases above numbered from 1 to 32, inclusive, were certified by petitioner to Circuit Court Commissioner Benjamin Gardner, of Troy, Alabama, he being the commissioner having his office nearest to the place of residence of the said defendants, under and by direction of an order made and entered in the circuit court of the United States for the middle district of Alabama, on the first day of October, 1881. In the cases numbered 33 and 34, the warrants of arrests were returned by the marshal unexecuted.

Your petitioner further avers that the charges of the several sums due him for above services as aforesaid were included in the account which, as such commissioner, he made against the United States, and which, after being verified by his oath, was duly presented to the district court of the United States for the middle district of Alabama for approval, and was approved by said court on the 11th day of November, A. D. 1886, and having been duly approved by said court as by law required, your petitioner caused to be delivered to the proper accounting officer of the Treasury Department of the United States, by whom it was duly audited and the balance due to your petitioner certified and transmitted to the First of said Department for his decision thereon. That said Comptroller, by his statement of differences, or report No. 101262 upon petitioner's said account for fees from July 1st, to Oct. 31st, 1886, disallowed said charges in the following words, to wit:

"1. From the evidence taken by special examiners, now in this office, letters of Dist. Atty. Denson, and the various accounts of commissioners in Alabama, it appears that much needless litigation is had. The practice of taking depositions upon which to ground complaints on which warrants are issued at the pleasures and convenience of the commissioner is in the nature of cham petry" (champerty), "and all charges for such depositions are disallowed, $40.00."

And your petitioner avers that such statement is not true in fact and is not warranted in law, but, that so far as relates to this petitioner and to the above cases, the said evidence taken by said special examiners, together

with their reports thereon, the said letters of said district attorney and all other proofs concerning the same, assert and establish exactly the contrary, to wit, that no needless litigation has instituted before your petitioner, and that no such practice exists or has existed before him, and especially in the cases herein set forth; all of which petitioner is ready to verify. And your petitioner demands oyer of said evidence, reports, letters, and accounts.

And your petitioner avers that complaints were duly made to him of the several violations of law, and against the persons charged, as herein above set forth, and that it thereupon became his duty, by virtue of his oath of office, under section 1014 of the Revised Statutes of the United States, "agreeably to the *the* usual mode of process against offenders in the State of Alabama," and in conformity with article 1, chapter 4, Title III, of the Code of Alabama, to "examine said complaints and witnesses on oath, and to take their said depositions in writing and to cause them to be subscribed by the persons making them," and to perform the other services herein set forth and charged.

3 And your petitioner further avers that the Revised Statu'es of the United States and the Code of Alabama were in full force and effect at the date of his said services and of the said decision of the said Comptroller, and are still in force.

That further services were rendered by your petitioner in like manner, as follows, to wit:

No.	Date.	Defendant.	Recog'z'ce witnesses.	Dep'n to ground complaint.	Bond.	Fees.
	1887.					
1	Jan. 3	Robert Harlick, Tolbert Daniels, Frank Crittenden.	.....	80	60	1.40
2	Jan. 3	F. M. Ansley	.....	80	70	1.50
3	Jan. 3	Wiley Reed	.....	Filing, 10	.....	.10
4	Jan. 14	J. M. Roper	.....	80	60	1.40
5	Jan. 15	Fk. Jones & Couch	.....	Filing, 10	.....	.10
6	Jan. 17	John Lee	60	80	60	2.00
7	Jan. 17	John Jossey	.....	80	.....	.80
8	Jan. 18	I. L. Merritt	60	.....	95	1.55
9	Jan. 19	John Sherrod	.....	Filing, 10	.....	.10
10	Jan. 19	Charles Martin	.....	Filing, 10	.....	.10
11	Jan. 19	Melvin Reeves	.....	Filing, 10	.....	.10
12	Jan. 19	William Bradley	.....	Filing, 10	.....	.10
13	Jan. 22	R. H. Kervin	.....	80	60	1.40
14	Jan. 22	Wm. M. Hanley	.....	80	60	1.40
15	Jan. 22	J. L. Chesser	.....	80	60	1.40
16	Jan. 22	W. A. Diamond	.....	Filing, 10	.....	.10
17	Jan. 22	G. B. Martin	.....	Filing, 10	.....	.10
18	Jan. 28	William Bradley	.....	80	.....	.80
19	Jan. 31	Samuel Durrell	.....	.....	60	.60
20	Jan. 31	William Holtson	.....	80	.....	.80
21	Feb. 5	Ben Johnson, sr	.....	Filing, 10	.....	.10
22	Feb. 5	Martin Wilson	.....	Filing, 10	.....	.10
23	Feb. 7	J. J. Turner	60	.....	60	1.20
24	Feb. 7	C. T. Kervin	60	80	60	2.00
25	Feb. 9	John Hart	.....	80	60	1.40
26	Feb. 9	Charles Sherrod	.....	Filing, 10	.....	.10
27	Feb. 10	W. R. Sandford	.....	80	60	1.40
28	Feb. 10	Peter Hall	.....	.....	60	.60
29	Feb. 14	John B. Adams	.....	Filing, 10	.....	.10
30	Feb. 14	J. B. Turner	60	.....	60	1.20
31	Feb. 17	A. M. Cross	60	80	60	2.00
32	Feb. 17	Joel A. Turner	.....	.....	60	.60
33	Feb. 17	G. W. Williams	.....	80	.....	.80
34	Feb. 18	E. A. C. Clayton	60	80	60	2.00
35	Feb. 18	George Cooper	60	.....	60	1.20
36	Feb. 18	John Brooks	.....	.....	60	.60
37	Feb. 21	John Paulk	60	.....	60	1.20
38	Feb. 21	Thomas South	60	.....	60	1.20
39	Feb. 22	W. J. Tompkins	60	.....	1.30	1.90
40	Feb. 22	J. W. Smith	60	.....	1.30	1.90
41	Feb. 28	John Bennett	60	80	60	2.00
42	Feb. 28	Geo. W. Cook	60	80	60	2.00
						$40.85

The papers in the cases numbered 3, 5, 9, 11, 13, 16, 10, 17, 21, 22, and 26 were certified to petitioner by Circuit Court Commissioner Bushrod W. Bell, of Montgomery, and Case No. 30 was certified from Commissioner Benjamin Gardner, of Troy, under the order of said circuit court of October 1st, 1881, heretofore mentioned, and the charge of ten cents in each of said cases is for filing said papers.

Your petitioner further avers that the charges of the several sums due him for above services were included in the account which, as such commissioner, he made against the United States, and which, after being duly verified by his oath, was duly presented to the district court of the United States for the southern division of the northern district of Alabama for approval, and was approved by said court at Birmingham on the day of March, A. D. 1887, and having been duly approved by said court as by law required, your petitioner caused to be delivered to the proper accounting officer of the Treasury Department of the United States, by whom they were duly audited, and the balace due your petitioner certified and transmitted to the First Comptroller of said Department for his decision thereon. That said Comptroller, by his statement of differences or report No. 102100 upon petitioner's account for fees from January 1st to Feb. 28th, 1887, disallowed the said charges in the following words, to wit:

"1. Charge for taking deposition upon which to ground complaint disallowed" (see item 1, report 101262), "$15.60."

"2. Charges for recognizance disallowed. The evidence taken
4 by the special examiners and letters of District Attorney Denson show that these recognizances as a rule are worthless. The same person is often under numerous recognizances to appear as defendant and witness at a certain term of court. There is no other place in the United States so given to put witness under bond and probably none where the alleged criminal attend so regularly, as if by instinct or force of habit, as in the State of Alabama, $25.35."

And your petitioner avers that such statements are not true in fact and are not warranted in law, but that so far as relates to this petitioner, and to the cases herein above enumerated, the said evidence taken by the said special examiners, together with their reports thereon, and the said letters of the said district attorney, assert and establish exactly the contrary. All of which your petitioner is ready to verify. And petitioner demands oyer of said evidence, reports, and letters.

Your petitioner further avers that he was not only authorized, but that he was particularly required by section 1014 of the Revised Statutes of the United States, to take and to return into the clerk's office of the circuit court of the United States for the middle district of Alabama, the court having by law cognizance of the offences with which said persons were charged, "the recognizances of the witnesses for their appearance to testify in the case," and each of the cases where said items are herein above charged. Petitioner admits that said recognizances taken and acknowledged before him have been sufficient in form and substance to secure the regular and proper attendance of the principals therein, but he denies that such fact is a legal ground for disallowing his charges for taking and acknowledging said recognizances, or is any justification for the allegation that said recognizances are worthless, or for the abrogation of said section 1014.

And your petitioner avers that said section 1014 was in full force and effect at the date when the said services were performed and at the date when said Comptroller rendered his said decision herein above recited; and that said section is still in force.

The aggregate sum due your petitioner from the United States for the services herein above enumerated is eighty dollars and eighty-five cents, and although said accounts have been duly presented to the proper accounting officer of the Treasury Department for payment, and although the same have been duly audited therein, and although payment of the same has been duly demanded, yet no part of the same has been paid to him, nor to any one for him, nor has any part of the same been allowed to him in any way as a credit or offset by any officer or department of the United States, but, on the contrary, allowance and payment thereof have been refused.

Your petitioner further shows that no part of the claim herein sued has been heard and determined, nor has heretofore been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Your petitioner further shows that no assignment or transfer of said claims, or any part thereof, has been made by him, and that he is the lawful owner thereof; that he has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against said Government.

Wherefore your petitioner prays judgment against the defendant for eighty dollars and eighty-five cents.

ROBERT BARBER,
Petitioner.
GEORGE H. PATRICK,
Attorney for Petitioner.

5 #351. *Petition for fees and services as commissioner at Montgomery, Ala., during* 1887.

UNITED STATES OF AMERICA,
Middle District of Alabama:

Before me, Joseph W. Dimmick, clerk of the district court of the United States in and for said district, personal'y appeared Robert Barber, this 24th day of June, 1887, who, being first duly sworn, deposes and says that he is the petitioner named in the foregoing petition and is justly entitled to the amount therein claimed from the United States, after allowing all just credits and set-offs, and that the facts therein stated are true to the best of his knowledge and belief.

J. W. DIMMICK, *Clerk.*

Filed June 24, 1887.

J. W. DIMMICK, *Clerk..*

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER *against* THE UNITED STATES. } No. 351. Filed Sept. 3rd, 1887.

To the honorable the district court of the United States in and for the middle district of Alabama and to the judge of said court:

Your petitioner, Robert Barber, a citizen of the United States and resident of Montgomery County, in the State of Alabama, and in said middle district of Alabama, whose post-office address is Montgomery, in said county and State, respectfully shows:

That he is a commissioner of the circuit court of the United States for said middle district of Alabama, and that he was such commissioner, duly appointed, qualified, and acting, from the 29th day of December, A. D. 1881, to the 3rd day of September, A. D. 1887, both inclusive.

That at divers times during his term of office, your petitioner, as such commissioner, performed for and on behalf and at the instance and request of the United States certain servi'es in the prosecution and in the arresting and holding to bail of persons charged with violating the penal laws of the United States. A schedule of such services is herein fully set forth, and your petitioner avers that such services were each and all actually and necessarily performed by him as herein stated and charged.

Your petitioner further avers that, under and pursuant to the provisions of section 847 of the Revised Statutes of the United States, he is and was entitled to receive from and be paid by the defendant the several sums hereinafter set opposite the several items of charges for said services performed by him as aforesaid.

The items of said services, together with the dates and names of the persons charged with such violations of law, and of the offences with which theey were charged, and the fees which your petitioner became entitled to demand and receive from, and to be paid by, the defendant therefor, are as follows, to wit:

6			Items disallowed and claimed herein.									
No.	Date ex.	Defendant.	Charge viol'n.	Complaint.	Recognizance.	Certif. proceedings.	Warrant and filing.	Cert. to marshal.	Spa. & filing.	Oath to witness.	Per diem.	Total.
	1887.											
1	Mch. 1	Jesse Jones	§2461	.25	.15	.15	.....	.....	.....	.....	.....	.55
2	" 2	James Ward	"	.25	.15	.15	.....	.10	.....	.....	.....	.65
3	"	Charles Oliver	"	.80	.60	.75	1.25	.80	.50	.20	.....	4.90
4	"	William A. Hassell	"	.25	.15	.15	.....	.10	.....	.....	.....	.65
5	"	John C. Gilmore	"	.25	.15	.15	.....	.10	.....	.....	.....	.65
6	Mch. 4	J. A. Hughes	"	.25	.....	.15	.....	.10	.....	.....	.....	.50
7	"	James Lanier	"	.80	.60	.75	1.25	.70	.50	.10	.....	4.70
8	Mch. 7	Jack Sasser	"	.25	.15	.15	.....	.10	.....	.....	.....	.65
9	Mch. 9	Mike Wiggins	"	.25	.15	.15	.....	.10	.....	.....	.....	.65
10	Mch. 9	Wm. A. Hogg	"	.25	.15	.15	.....	.10	.....	.....	.....	.65
11	Mch. 10	William Spence	"	.80	.60	.75	1.25	.90	.50	.30	5.00	10.10
12	Mch. 9	Anthony Feagin	"	.25	.15	.15	.....	.10	.....	.....	.....	.65
13	Mch. "	Wm. T. Irwin	"	.....	.15	.....	.....	.....	.....	.....	.....	.15
14	Mch. 14	Henry Jossey et als	"	1.60	1.20	.75	1.25	.90	.50	.40	5.00	11.60

No.	Date ex.	Defendant.		Items disallowed and claimed herein.									
			Charge viol'n.	Complaint.	Recognizance.	Certif. pro ceedings.	Warrant and filing.	Cert. to marshal.	Spa. & filing.	Oath to witness.	Per diem.	Total.
	1887.											
15	Mch. 14	Wiley and James South	$2461	.50	.....	.15	.....	.10	.....	.....	.....	.75
16	Mch. 15	Wm. D. Kervin	"	.80	.60	.75	1.25	.80	.50	.30	5.00	10.10
17	Mch. 15	J. P. Kirby	"	.80	.60	.75	1.25	.80	.50	.20	.....	4.90
18	Mch. 15	Calvin Nowland	"	.80	.....	.75	1.25	.....	.50	.10	.....	3.40
19	Mch. 16	J. W. Alford	"	.25	.15	.15	.....	.10	.....	.....	.....	.65
20	Mch. 18	James Dorman	"	.25	.50	.15	.....	.10	.....	.....	.....	1.00
21	Mch. 18	Jno. W. Blackshear	"	.....	.15	.....	.15	.....	.10	.....	.....	.40
22	Mch. 19	Riley Christian	"	.80	1.30	.75	1.25	.80	.50	.20	.....	5.80
23	Mch. 19	Charles Oliver	"	.80	1.30	.75	1.25	.80	.50	.20	.....	5.80
24	Mch. 19	Mike Beck	"	.80	1.30	.75	1.25	.80	.50	.20	5.00	10.60
25	Mch. 21	Jno. D. Cayton	"	.80	1.30	.75	1.25	.80	.50	.20	5.00	10.60
26	Mch. 21	G. A. Williams	"	.25	.....	.15	.....	.....	.....	.....	.....	.40
27	Mch. 21	Guilford Stevens	"	.80	.....	.75	1.25	.80	.50	.20	.....	4.30
28	Mch. 21	Daniel Wilson	"	.80	.....	.75	1.25	.70	.50	.10	.....	4.10
29	Mch. 23	Daniel Smith	"	.80	1.30	.75	1.25	.80	.50	.20	5.00	10.60
30	Mch. 23	George W. Jones	"	.....	.50	.15	.....	.10	.....	.....	.....	.75
31	Mch. 24	Wm. Thompson	"	.80	1.30	.75	1.25	.80	.50	.20	5.00	10.60
32	Mch. "	H. A. Wilson	"	.80	1.30	.75	1.25	.70	.50	.10	.....	5.40
33	Mch. "	John Freeman	"	.80	.....	.75	1.25	.80	.50	.20	.....	4.30
34	Mch. 26	Wm. S. Jones	"	.15	.65	.15	.....	.10	.....	.....	.....	1.05
35	Mch. 26	Samuel Jackson	"	.80	1.30	.75	1.25	.70	.50	.10	.....	5.40
36	Mch. 28	Daniel Paul	"	.80	.....	.75	1.25	.80	.50	.20	5.00	9.30
37	Mch. "	John Hitson	"	.80	.....	.75	1.25	.70	.50	.10	.....	4.10
38	Mch. "	William Dorman	"	.15	.....	.75	.....	.10	.....	.....	.....	.40
39	Mch. 28	C. K. Harwell	"	.80	.....	.75	1.25	.80	.50	.20	.....	4.30
40	Mch. 31	A. B. Salas	"	.80	1.30	.15	1.25	.70	.50	.10	5.00	10.40
41	Mch. 31	Jno. W. Smith	"	.30	.65	.15	.....	.10	.....	.....	.....	1.20
42	Mch. 31	J. R. Ealam	"	.80	1.30	.75	1.25	.70	.50	.10	.....	5.40
43	Mch. 31	J. C. Cross	"	.80	1.30	.75	1.25	.80	.50	.20	.....	5.60
44	Apl. 4	John Rosslick	"	.80	.95	.75	1.25	.70	.50	.10	5.00	10.05
45	Apl. 4	John Barrow	"	.15	.....	.15	.....	.10	.....	.....	.....	.40
46	Apl. 9	William Rayborn	"	.45	.65	.15	.....	.10	.....	.....	.....	1.35
47	Apl. 17	Riley Johnson	"	.....	.....	.15	.....	.10	.....	.....	.....	.25
48	Apl. "	Stephen Kervin	"	.15	.....	.15	.....	.10	.....	.....	.....	.40
49	Apl. "	Wm. Nowland	"	.80	.....	.75	1.25	.80	.50	.20	.....	4.30
50	Apl. "	Mack Yohn	"	.80	.....	.75	1.25	.80	.50	.....	.....	4.10
51	Apl. "	Wiley South	"	.80	.....	.75	1.25	.70	.50	.10	.....	4.10
52	Apl. 8	John Butler	"	.....	.....	.15	.....	.10	.....	.....	.....	.25
53	Apl. "	Daniel Butler	"	.....	.....	.15	.....	.10	.....	.....	.....	.25
54	Apl. 11	Tint Lee et als	"	.80	.....	.75	1.25	.70	.50	.10	5.00	9.10
55	Apl. 11	John Adams	"	.30	.....	.15	.....	.10	.....	.....	.....	.55
56	Apl. 14	Wiley Adams	"	.80	.....	.75	1.25	.70	.50	.10	.....	4.10
57	Apl. 14	Jerry Johnson	"	.80	.....	.75	1.25	.80	.50	.20	.....	4.30
58	Apl. 14	Elisha Carroll	"	.15	.65	.15	.....	.10	.....	.....	.....	1.05
59	Apl. 14	Alex. Jackson	"	.15	.65	.15	.....	.10	.....	.....	.....	1.05
60	Apl. 16	John Watson	"	.15	.....	.15	.....	.10	.....	.....	.....	.40
61	Apl. 16	Charles Copps	"	.15	.....	.15	.....	.10	.....	.....	.....	.40
62	Apl. 14	John Warren	"	.15	.65	.15	.....	.10	.....	.....	.....	1.05
63	Apl. "	Henry Mason	"	.15	.65	.15	.....	.10	.....	.....	.....	1.05
64	Apl. 16	William Williams	"	.15	.....	.15	.....	.....	.....	.10	.....	.40
65	Apl. 22	John Waters	"	.15	.....	.15	.....	.10	.....	.....	.....	.40
66	Apl. 21	Wm. McCarty	"	.45	.65	.15	.....	.10	.....	.....	.....	1.35
67	Apl. "	Thomas J. Jackson	"	.80	1.30	.75	1.25	.80	.50	.20	.....	5.80
68	Apl. "	Bill Scroggins	"	.80	.....	.75	1.25	.80	.50	.20	.....	4.30
69	Apl. "	John Jackson	"	.15	.....	.15	.....	.....	.....	.....	.....	.30
70	Apl. "	Wash. Siller	"	.80	1.30	.75	1.25	.80	.50	.50	.....	5.60
71	Apl. 25	Frank Dolman	"	.15	.....	.15	.....	.10	.....	.....	.....	.40
72	Apl. 25	Ben. Gilbert	"	.15	.....	.15	.....	.10	.....	.....	.....	.40
73	Apl. 22	Austin S. Lunsford	"	.80	.....	.75	1.25	.80	.50	.20	5.00	8.30
74	Apl. 30	George Coon	"	.30	.65	.15	.....	.....	.....	.....	.....	1.10
75	Apl. 7	Jasper Coon	"	.30	.65	.15	.....	.10	.....	.....	.....	1.20
76	Mch. 2	Berry Atkinson	"	.15	.15	.15	.....	.10	.....	.....	.....	.55
77	Apl. 21	Wm. McCarty	"	.....	.15	.....	.....	.....	.....	.....	.....	.15
78	Apl. 25	Amos Hicks	"	.....	.15	.....	.....	.....	.....	.....	.....	.15
79	Apl. 30	Henry Day	"	.80	1.30	.75	1.25	.90	.50	.30	5.00	10.80
80	Apl. 25	Lewis Couch	"	.....	.15	.....	.....	.....	.....	.....	.....	.15
81	Apl. 29	George Hardy	"	.15	.....	.15	.....	.10	.....	.....	.....	.40
82	Apl. 29	J. E. Jones	"	.80	.....	.75	1.25	.80	.50	.20	.....	4.30
83	Apl. 30	Joseph Coon	"	.80	1.30	.75	1.25	.....	.50	.....	.....	4.60
84	Apl. 30	Green Conley	"	.80	1.30	.75	1.25	.80	.50	.20	.....	5.60
85	Apl. 30	Leonard Carroll	"	.80	1.30	.75	1.25	.80	.50	.20	.....	5.60
				41.10	36.85	36.15	50.00	33.40	20.00	6.90	63.00	288.40

Your petitioner further avers that the charges of the several sums due him for above services as aforesaid were included in the account which, as such commissioner, he made against the United States, and which, after being verified by his oath, was duly presented to the district
7 court of the United States for the middle district of Alabama, for approval, and was approved by said court on the 17th day of May, A. D. 1887, and having been duly approved by said court as by law required, your petitioner caused to be delivered to the proper accounting officer of the Treasury Department of the United States, by whom it was duly audited and the balance due your petitioner certified and transmitted to the First Comptroller of said Department for his decision. That said Comptroller, by his statement of differences, or report No. 103,246, upon petitioner's said account for fees from March 1st to April 30th, 1887, disallowed said above charges. And your petitioner avers that said disallowances were not warranted in fact or in law, but that the items and amounts of said charges were lawful and just.

That further services were rendered by your petitioner, as follows, to wit:

No.	Date.	Defendant.	Charge.	Compl't.	Warrant and return.	Cert. o't.	Subpœna.	Am't.
	1886.							
1	July 19	Edward Barnhill	2461	.80	1.25	.....	.25	2.30
2	" "	Charles Barnhill	"	.80	1.25	.....	.25	2.30
	1885.							
3	Dec. 9	James Bradgood	"	.80	1.25	.....	.25	2.30
	1886.							
4	July 19	Peter Campbell	"	.80	1.25	.....	.25	2.30
	1887.							
5	Apl. 9	T. D. Coon	"	.80	1.25	.....	.25	2.30
6	" 15	Sam'l Lunsford	"	.80	1.25	.....	.25	2.30
	1885.							
7	Dec. 17	Rob't Bozeman	"	.80	1.25	.....	.25	2.30
	1886.							
8	July 19	Jeff. George	"	.80	1.25	.....	.25	2.30
9	" "	David Campbell	"	.80	1.25	.....	.25	2.30
	1885.							
10	Oct. 22	Willis Mauely	"	.80	1.25	.....	.25	2.30
11	" "	John Martin	"	.80	1.25	.....	.25	2.30
12	" "	Lee Hawse	"	.80	1.25	.....	.25	2.30
13	" "	Robert Craig	"	.80	1.25	.....	.25	2.30
14	" "	John Brown	"	.80	1.25	.....	.25	2.30
15	" 26	William Williams	"	.80	1.25	.....	.25	2.30
16	" 22	Perry Holt	"	.80	1.25	.....	.25	2.30
17	" 22	Henry Church	"	(2) 1.60	1.25	.....	.25	3.10
18	" 22	Eli Crenshaw	"	.80	1.25	.....	.25	2.30
	1886.							
19	Jany. 9	John Brown	"	(2) 1.60	1.25	.....	.25	3.10
	1885.							
20	Dec. 15	H. O. Sawell	"	.80	1.25	.....	.25	2.30
	1886.							
21	Jany. 9	Willie Brown	"	(2) 1.60	1.25	.....	.25	3.10
	1885.							
22	Aug. 5	Calvin Chestnut	"	.80	1.25	.....	.25	2.30
	1887.							
23	Mch. 15	Ed. Keely	"	.80	1.25	.....	.25	2.30
24	"	Felix Hughes	"	.80	1.25	.....	.25	2.30

No.	Date.	Defendant.	Charge.	Compl't.	Warrant and return.	Cert. e't.	Subpœna.	Am't.
	1885.							
25	Mch. 31	James Fletcher	2461	(4) 3. 20	1. 25	.....	.25	4. 70
26	Sept. 5	Wesley Johnson	"	.80	1. 25	.....	.25	2. 30
[8]								
27	Nov. 13	David Johnson	"	.80	1. 25	.....	.25	2. 30
28	"	Charles Davis	"	(3) 3. 20	1. 25	.....	.25	4. 70
29	Oct. 8	Willis Hutto	"	.80	1. 25	.....	.25	2. 30
30	Nov. 12	Israel Johnson	"	.80	1. 25	.....	.25	2. 30
31	" 17	Henry Sasser	"	.80	1. 25	.....	.25	2. 30
32	Sept. 5	Paul Kelley	"	(3) 1. 60	1. 25	.....	.25	3. 10
33	" 10	Wm. Musselwhite	"	.80	1. 25	.....	.25	2. 30
	1886.							
34	Nov. 4	Ellis Reid	"	.80	1. 25	.....	.25	2. 30
	1885.							
35	Nov. 11	Thomas Brooks	§2461	.80	1. 25	.....	.25	2. 30
36	Aug. 3	John Fletcher	"	(3) 2. 40	1. 25	.....	.25	3. 90
37	Nov. 12	Daniel Brooks	"	.80	1. 25	.....	.25	2. 30
38	Sept. 10	Robert Tucker	"	.80	1. 25	.....	.25	2. 30
	1886.							
39	Apl. 24	George Hopkins	"	.80	1. 25	.....	.25	2. 30
	1885.							
40	Sept. 7	Thomas J. Watkins	"	.80	1. 25	.....	.25	2. 30
41	Nov. 9	Andrew Wallace	"	.80	1. 25	.....	.25	2. 30
42	Aug. 5	John Adkinson	"	.80	1. 25	.....	.25	2. 30
	1886.							
43	Aug. 25	Wm. Fletcher	"	.80	1. 25	.....	.25	2. 30
	1885.							
44	Sep. 15	Frank Thomas	"	.80	1. 25	.....	.25	2. 30
45	" 7	Cambie Booker	"	(3) 1. 60	1. 25	.....	.25	3. 10
	1886.							
46	Apl. 24	Frank Watson	"	.80	1. 25	.....	.25	2. 30
	1885.							
47	Oct. 24	Peter Canterfeit	"	(3) 1. 60	1. 25	.....	.25	3. 10
48	Dec. 5	George Smith	"	.80	1. 25	.....	.25	2. 30
49	Nov. 17	Eli Parker	"	.80	1. 25	.....	.25	2. 30
50	S pt. 10	Wesley Niece	"	.80	1. 25	.....	.25	2. 30
51	Nov. 12	Wm. Ramer	"	(3) 1. 60	1. 25	.....	.25	3. 10
52	"	Lewis Johnson	"	.80	1. 25	.....	.25	2. 30
53	"	Bud Ramer	"	.80	1. 25	.....	.25	2. 30
54	"	Henry Teel	"	(3) 1. 60	1. 25	.....	.25	3. 10
55	"	John Ramer	"	(3) 1. 60	1. 25	.....	.25	3. 10
56	"	Daniel Savage	"	.80	1. 25	.....	.25	2. 30
57	Sep. 10	John Markham	"	.80	1. 25	.....	.25	2. 30
	1887.							
58	Apl. 30	Isaac Weeks et als	5440	1. 70	1. 00	.75	.25	3. 70
59	"	Eli W. Burkett et als	"	1. 70	1. 00	.75	.25	3. 70
60	"	Andrew J. Weeks et als	"	1. 70	1. 00	.75	.25	3. 70
61	"	John D. Fleming et als	"	1. 70	1. 00	.75	.25	3. 70
[9]								
62	"	Eli T. Cleghorn et als	"	1. 70	1. 00	.75	.25	3. 70
63	"	D. W. Burkett "	"	1. 70	1. 00	.75	.25	3. 70
64	"	Abe Reynolds et al	"	1. 70	1. 00	.75	.25	3. 70
65	"	C. C. Russell et at	"	1. 70	1. 00	.75	.25	3. 70
	1887.							
66	Apl. 30	Richard Creeck et al		2. 50 & copty	1. 00	.75	.25	4. 50
67	"	Maltida Weeks et al	"	2. 70	1. 00	.75	.25	4. 70
68	"	Susan Weeks "		2. 70	1. 00	.75	.25	4. 70
69	"	J. G. Paul "	"	2. 70	1. 00	.75	.25	4. 70
70	"	M. A. D. Wise "	"	2. 70	1. 00	.75	.25	4. 70
71	"	Warren Weeks "	"	2. 70	1. 00	.75	.25	4. 70
72	"	Marion Gill "	"	2. 70	1. 00	.75	.25	4. 70
73	"	J. W. Johnson "	"	2. 70	1. 00	.75	.25	4. 70
74	"	Thomas J. Price "	"	2. 70	1. 00	.75	.25	4. 70
75	"	John A. Weeks "	"	2. 70	1. 00	.75	.25	4. 70
76	"	Nancy Pierce "	"	2. 70	1. 00	.75	.25	4. 70
77	"	Oliver Thompson "	"	1. 45	1. 00	.75	.25	3. 45
78	May 7	Jno. D. Fleming	§5392	1. 45	1. 00	.75	.25	3. 45
79	"	Thomas J. Pierce	"	1. 45	1. 00	.75	.25	3. 45
80	"	John A. Weeks	"	1. 45	1. 00	.75	.25	3. 45
81	"	Marion Gill	"	1. 45	1. 00	.75	.25	3. 45
82	"	J. C. Russell	"	1. 45	1. 00	.75	.25	3. 45
83	"	Andrew J. Weeks	"	1. 45	1. 00	.75	.25	3. 45
84	"	Mike A. D. Wise	"	1. 45	1. 00	.75	.25	3. 45
85	"	Warren Weeks	"	1. 45	1. 00	.75	.25	3. 45
86	"	John G. Paul	"	1. 45	1. 00	.75	.25	3. 45

No.	Date.	Defendant.	Charge.	Compl't.	Warrant and return.	Cert. o't.	Subpœna.	Am't.
	1887.							
87	" "	Richard Creech	5392	1.45	1.00	.75	.25	3.45
88	"	Eli T. Cleghorn	"	1.45	1.00	.75	.25	3.45
89	"	Abe Reynolds	"	1.45	1.00	.75	.25	3.45
90	"	Matilda Weeks	"	1.45	1.00	.75	.25	3.45
91	"	Eli W. Burkett	"	1.45	1.00	.75	.25	3.45
92	"	James W. Johnson	"	1.45	1.00	.75	.25	3.45
93	"	John A. Easley	"	1.45	1.00	.75	.25	3.45
94	"	Daniel W. Burkett	"	1.45	1.00	.75	.25	3.45
95	"	C. C. Russell	"	1.45	1.00	.75	.25	3.45
96	"	Isaac Weeks	"	1.45	1.00	.75	.25	3.45
[10]								
97	May 7	George W. Wright et al	5393	1.45	.....	.75	.....	2.20
98	"	"	"	1.45	.....	.75	.....	2.20
99	"	"	"	1.45	.....	.75	.....	2.20
100	"	"	"	1.45	.....	.75	.....	2.20
101	"	"	"	1.45	.....	.75	.....	2.20
102	"	"	"	1.45	.....	.75	.....	2.20
103	"	"	"	1.45	.....	.75	.....	2.20
104	"	"	"	1.45	.....	.75	.....	2.20
105	"	"	"	1.45	.....	.75	.....	2.20
106	"	"	"	1.45	.....	.75	.....	2.20
107	"	"	"	1.45	.....	.75	.....	2.20
108	"	"	"	1.45	.....	.75	.....	2.20
109	"	"	"	1.45	.....	.75	.....	2.20
110	"	"	"	1.45	.....	.75	.....	2.20
111	"	"	"	1.45	.....	.75	.....	2.20
112	"	"	"	1.45	.....	.75	.....	2.20
113	"	"	"	1.45	.....	.75	.....	2.20
114	"	"	"	1.45	.....	.75	.....	2.20
115	"	"	"	1.45	.....	.75	.....	2.20
116	"	"	"	1.45	.....	.75	.....	2.20
117	"	"	"	1.45	.....	.75	.....	2.20
118	"	"	"	1.45	.....	.75	.....	2.20
119	Apl. 14	Daniel Thompson	2461	.80	1.25	.....	.25	2.30
120	"	George Boles	"	.80	1.25	.....	.25	2.30
121	" 21	John Butler	"	.80	1.25	.....	.25	2.30
122	Mch. 21	Sidney Hudson	"	.80	1.25	.....	.25	2.30
123	"	Samuel Parker	"	.80	1.25	.....	.25	2.30
124	" 18	John Cox	"	.80	1.25	.....	.25	2.30
125	" 15	George Gordner	"	.80	1.25	.....	.25	2.30
126	" 9	Mack Mathews	"	.80	1.25	.....	.25	2.30
127	" 9	Stone Jones	"	.80	1.25	.....	.25	2.30
128	" 18	John Williams	"	.80	1.25	.....	.25	2.30
129	" 15	Burr Bullock	"	.80	1.25	.....	.25	2.30
130	" 18	Wm. Williamson	"	.80	1.25	.....	.25	2.30
131	" 18	Wiley Beasley	"	.80	1.25	.....	.25	2.30
[11]								
132	Mch. 18	Elijah Padgett	2461	.80	1.25	.....	.25	2.30
133	Apl. 14	R. L. E. Thompson	"	.80	1.25	.....	.25	2.30
134	Mch. 24	Thomas Perry	"	.80	1.25	.....	.25	2.30
135	Apl. 21	John Stone	"	.80	1.25	.....	.25	2.30
136	" 14	James Richardson	"	.80	1.25	.....	.25	2.30
137	" "	A. C. Morrell	"	.80	1.25	.....	.25	2.30
138	May 3	James Turner	"	(2) 1.60	1.25	.....	.25	2.30
139	Apl. 6	Jason Thompson	"	(2) 1.60	1.25	.....	.25	2.10
140	Mch. 24	James Padgett	"	.80	1.25	.....	.25	2.30
141	" 28	Jefferson Capps	"	.80	1.25	.....	.25	2.30
142	" 24	Wm. Parker	"	.80	1.25	.....	.25	2.30
143	" "	Eli Whittle	"	.80	1.25	.....	.25	2.30
144	May 2	James Smith	"	.80	1.25	.....	.25	2.30
145	" "	George Cooper	"	.80	1.25	.....	.25	2.30
146	" "	Job Tompkins	"	.80	1.25	.....	.25	2.30
147	" "	M. Beck	"	.80	1.25	.....	.25	2.30
				118.15	146.50	45.75	31.25	411.65

All the papers in the cases numbered 67, 68, 78, and 91 to 118, inclusive, were certified by petitioner to Circuit Court Commissioner Benjamin Gardner, of *of* Troy, Alabama, he being the commissioner having his office nearest to the place of residence of the *of the* said defendants, under and by direction of an order made and entered in the circuit court of the

United States for the middle district of Alabama, on the first day of October, 1881. In others of said cases the warrants of arrest were returned, for good and sufficient reasons, by the marshal unexecuted.

Your petitioner further avers that the charges of the several sums due him for above services last aforesaid were included in the account which, as such commissioner, he made against the United States, and which, after being verified by his oath, was duly presented to the district court of the United States for the middle district of Alabama, for approval, and was approved by said court of the 28th day of June, A. D. 1887.

And petitioner files in said court on the day hereof his said original account, approved as aforesaid, as the bill of particulars of the items herein set forth and charged. Petitioner has heretofore filed in the said circuit court of the United States for the middle district of Alabama, in the clerk's office thereof, the original papers and proceedings before him in the 147 cases hereinabove enumerated, except the 31 cases certified as aforesaid to Commissioner Gardner, and also in the 85 cases first above enumerated.

And your petitioner further avers that complaints were duly made to him of all *of all* of the several violations of law, and against the persons charged, concerning which the said fees were so charged and demanded, and that it thereupon became and was his duty, by virtue of his oath of office, under section 1014 of the Revised Statutes of the United
12 States, "agreeably to the usual mode of process against offenders in the State of Alabama," and in conformity with Article I, chapter 4, Title III, of the code of Alabama, "to examine said complainants and witnesses on oath, and to take their said depositions in writing, and to cause them to be subscribed by the persons making them," and to perform the other services herein set forth and charged.

And your petitioner further avers that he was particularly required by said section 1014 of the Revised Statutes of the United States to take and to return into the clerk's office of the circuit court of the United States for the middle district of Alabama, the court having by law cognizance of the offenses with which such persons were charged, "the recognizance of the witnesses for their appearance to testify in the case" and each of the cases where such items of services are herein charged.

The aggregate sum due petitioner from the United States for the services hereinabove enumerated is seven hundred and one dollars and five cents ($701.05).

And petitioner avers that no part of the same has been paid to him, nor to any person for him, nor has any part of the same been allowed to him in any way as a credit or offset by any officer or department of the United States, and that the whole of said sum is now due and unpaid.

Your petitioner further shows that no part of the claim herein sued has been heard and determined, nor has therefore been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Your petitioner further shows that no assignment nor transfer of said claim, or any part thereof, has been made by him, and that he is the lawful owner thereof.

And petitioner solemnly swears that he will support and defend the Constitution of the United States against all enemies, foreign and domes-

tic; that he will bear true faith and allegiance to the same; that he takes this obligation freely, without any mental reservation or purpose of evasion.

Wherefore your petitioner prays judgment against the defendant for seven hundred and one dollars and five cents ($701.05).

ROBERT BARBER,
Petitioner.

GEORGE H. PATRICK,
Attorney for Petitioner.

UNITED STATES OF AMERICA,
Middle District of Alabama:

Before me, Bushrod W. Bell, a commissioner of the circuit court of the United States for the middle district of Alabama, on the 3rd day of September, A. D. 1887, at Montgomery, in the said district and State, personally appeared Robert Barber, to me well known, who, being by me first duly sworn according to law, deposes and says that he is the petitioner named in the foregoing petition, and that he is justly entitled to the amounts therein claimed from the United States, after deducting all just credits and offsets, and that the facts therein stated are true to the best of his knowledge and belief.

B. W. BELL,
U. S. Commissioner, Mid. Dist. of Ala.

ROBERT BARBER [SEAL],
Commissioner Circuit Court of the United States for the Middle District of Alabama.

Filed Sept. 3rd, 1887.

J. W. DIMMICK,
Clerk.

13 *No.* 353. *Petition for fees and services as commissioner at Montgomery, Ala., in May and June,* 1887.

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER
against
THE UNITED STATES. } 353. Filed September 20th, 1887.

To the honorable the district court of the United States in and for the middle district of Alabama, and to the judge of said court:

Your petitioner, Robert Barber, a citizen of the United States and resident of Montgomery County, in the State of Alabama, and in said middle district of Alabama, whose post-office address is Montgomery, in said county and State aforesaid, respectfully shows:

That he is a commissioner of the circuit court of the United States for said middle district of Alabama, and that he was such commissioner, duly appointed and qualified and acting, from the 29th day of December, 1881, to the 20th day of September, 1887, both inclusive.

That at divers times during his term of office, your petitioner, as such commissioner, performed for and on behalf and at the instance and request of the United States certain services in the prosecution and in the arresting and holding to bail of persons charged with violating the penal laws

of the United States. A schedule of the cases in which said services were performed, together with the amounts due your petitioner therefor, is herein fully set forth.

And your petitioner avers that such services were each and all actually and necessarily performed by him as herein stated and charged.

Your petitioner further avers that, under and pursuant to the provisions of section 847 of the Revised Statutes of the United States, he is and was entitled to receive from and be paid by the defendant the several sums set opposite the cases hereinbelow stated, to wit:

No.	Date of examination.	Defendant.	Items disallowed and claimed herein.									
			Charge, violating U. S.	Comp't.	Warrant and filing.	Sp'a ent. and filing.	Oath to witness.	Per diem.	Bond.	Pay-roll.	Trans. of proceedings.	Total.
	1887.											
1	May 2	Andrew Sloan et als.	5440	1.35	.....	.....	.....	.....	.15	.....	.15	1.65
2	"	Andrew Sloan	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
3	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
4	"	Alexander Jones et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
5	"	Alexander Jones	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
6	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
7	"	J. B. Vaughn et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
8	"	J. B. Vaughn	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
9	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
10	"	Aaron Harris et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
11	"	Aaron Harris	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
12	"	D. F. Sullivan	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
13	"	Isaac Parker et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
14	"	Isaac Parker	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
15	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
16	"	Nathaniel Adams et al	5440	2.00	1.25	.50	.....	.....	.....	.....	.75	4.50
[14]												
17	May 2	Nathaniel Adams	5392	.30	.....	.....	.....	.....	.....	.....	.....	.30
18	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
19	"	Willis Smith et al	5440	2.00	1.25	.50	.....	.....	.....	.....	.75	4.50
20	"	Willis Smith	5392	.30	.....	.....	.....	.....	.....	.....	.....	.30
21	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
22	"	Pompey Lindsay et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
23	"	Pompey Lindsay	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
24	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
25	"	George Lyons et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
26	"	George Lyons	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
27	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
28	"	Alex. Hall et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
29	"	Alex. Hall	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
30	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
31	"	Prince Perdue et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
32	"	Prince Perdue	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
33	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
34	"	Wm. Robinson et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
35	"	Wm. Robinson	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
36	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
37	"	Frank Adams et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
38	"	Frank Adams	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
39	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
40	"	Levi Bailey et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
41	"	Levi Bailey	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
42	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
43	"	Moses Taylor et al	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
44	"	Moses Taylor	5392	.30	.....	.....	.....	.....	.....	.....	.15	.45
45	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
46	"	Anderson Castleberry et al.	5440	2.00	1.25	.50	.....	.....	.60	.....	.75	5.10
47		Anderson Castleberry.	5392	.30	.....	.....	.....	.....	.....	.....	.15	1.45
48	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
49	"	Ed. C. Cole et al	5440	2.00	1.25	.50	.....	.....	.....	.....	.75	4.50
50	"	E. C. Cole	5392	.30	.....	.....	.....	.....	.....	.....	.....	.30
51	"	D. F. Sullivan et al	5393	.95	.....	.....	.....	.....	.....	.....	.75	1.70
[15]	"											
52	May 2	Alex. Nicholson et al	5440	2.00	1.25	.50	.....	.....	.....	.....	.75	4.50

No.	Date of examination.	Defendant	Items disallowed and claimed herein. Charge, violating § R. S.	Compt.	Warrant and filing.	Sp'a's ent. and filing.	Oath to witness.	Per diem.	Bond.	Pay-roll.	Trans. of proceedings.	Total.
	1887.											
53	May 2	Alex. Nicholson	5392	.30								.30
54	"	D. F. Sullivan et al	5393	.95							.75	1.70
55	"	Jesse King et al	5440	2.00	1.25	.50					.75	4.50
56	"	Jesse King	5392	.30								.30
57	"	D. F. Sullivan et al	5393	.95							.75	1.70
58	"	Chas. Tucker et al	5440	2.00	1.25	.50					.75	4.50
59	"	Chas. Tucker	5392	.30								.30
60	"	D. F. Sullivan et al	5393	.95							.75	1.70
61	"	Miles Higdon et al	5440	2.00	1.25	.50					.75	4.50
62	"	Miles Higdon	5392	.30								.30
63	"	D. F. Sullivan et al	5393	.95							.75	1.70
64	"	D. W. Burk et al	5440	2.00	1.25	.50					.75	4.50
65	"	D. W. Burk	5392	.30								.30
66	"	D. F. Sullivan et al	5393	.95							.75	1.70
67	"	Moses Horton et al	5440	2.00	1.25	.50					.75	4.50
68	"	Moses Horton	5392	.30								.30
69	"	D. F. Sullivan et al	5393	.95							.75	1.70
70	"	John Guthrie	2461	.15						.10	.75	.40
71	"	John Bullock	2461	.15						.10	.15	.40
72	"	Hezekiah Baker	"	.15						.10	.15	.50
73	May 4	W. L. Grant et al	5440	2.00	1.25	.50		5.00	.60		.75	10.10
74	"	W. L. Grant	5392	.15							.15	.30
75	"	D. F. Sullivan et al	5393	.95							.75	1.70
76	May 11	William Williams	2461	.15						.10	.15	.40
77	"	George Cook	"	.15							.15	.30
78	"	J. Gomillion	"	.15						.10	.15	.40
79	May 12	Joseph J. Coon	"	.30					.15	.10	.15	.70
80	"	James George	"	.15					.15	.10	.15	.55
81	"	George Bailey	"	.80	1.25	.50	.20		1.30	.70	.75	5.50
82	"	William Rigdon	"	.15					.15	.10	.15	.55
83	May 14	La Fayette Merritt et al	"	.15					1.00	.10	.15	1.40
84	"	H. O. Sawell	"	.15						.10	.15	.40
85	"	Marion Merritt	"	.80	1.25	.50	.30		1.30	.80	.75	5.70
86	May 17	W. G. Cook	"	.15					.15	.10	.15	.55
[18]												
87	May 17	W. T. Thomas	2461	.15						.10	.15	.40
88	"	A. S. Wallace	"	.15					.15	.10	.15	.55
89	"	Wm. Gatney	"	.15					.15	.10	.15	.55
90	"	Moses Harrison	"	.15					.15		.15	.45
91	May 18	D. T. Pressley	"	.15					.15	.10	.15	.55
92	"	D. McIntyre	"	.15					.15	.10	.15	.55
93	"	Charles Davis	"	.15					.40	.10	.15	.80
94	"	Lep Irwin	"	.15					.40	.10	.15	.80
95	"	George Alexander	"	.15					.40	.10	.15	.80
96	"	Thomas Williams	"	.15					.40	.10	.15	.80
97	"	Coles Jones	"	.80	1.25	.50	.30			.90	.75	4.50
98	"	Jno. B. Meek	"	.15						.10	.15	.40
99	"	Samuel J. Houston	"	.15						.10	.15	.40
100	"	William H. Dorsey	"	.15					.15	.10	.15	.55
101	"	John D. Wiggins	"	.15						.10	.15	.40
102	May 18	John Wiggins	"	.15						.10	.15	.40
103	May 24	C. D. Grasskoff	3376	.16						.10	.15	.40
104	" 25	William Hitson	2461	.15					.15	.10	.15	.55
105	"	John Binion	"	.15						.10	.15	.40
106	May 25	James Ivey	"	.15						.10	.15	.40
107	"	Erastus Mitchell	"	.80	1.25	.50	.20			.80	.75	4.30
108	"	Hezekiah Baker	"	.15					.15	.10	.15	.55
109	May 28	John Huggins	"	.15					.15	.10	.15	.55
110	"	Joseph S. Burks	"	.15						.10	.15	.40
111	"	Charles Elliott	"	.15						.10	.15	.40
112	"	Jack Sandford	"	.15					.15		.15	.45
113	"	Jeff Worrall	"	.15						.10	.15	.40
114	May 31	John Averett	"	.15						.10	.15	.40
115	"	Stephens Franklin	"	.15						.10	.15	.40
116	"	Joseph Brown	"	.80	1.25	.50	.20				.75	3.50
117	June 4	Jeff Hamilton	"	.15					.15	.10	.15	.55
118	"	Maud T. Pickren	"	.15						.10	.15	.40
119	"	John Jackson	"	.15					.15	.10	.15	.55
120	"	Joseph Coon	"	.15					.15	.10	.15	.55
121	"	Jasper McQueen	"	.30					.15		.15	.60
				87.30	35.00	14.00	1.20	5.00	15.85	7.10	48.00	213.45

17 The items of said services, together with the dates and the names of the persons charged with such violations of law, and of the offences with which they were charged, and the fees which your petitioner became entitled to demand and receive from and be paid by the defendants therefor, are as hereinabove recited; and petitioner has heretofore filed in the circuit court of the United States for the middle district of Alabama, in the clerk's office thereof, the original papers and proceedings before him in said one hundred and twenty-one cases.

Your petitioner further avers that the charges of the several sums due him for above services as aforesaid were included in the account which, as such commissioner, he made against the United States, and which, after being verified by his oath, was duly presented to the district court of the United States for the middle district of Alabama for approval, and was approved by said court on the 28th day of June, 1887, and having been duly approved by said court as by law required, your petitioner caused to be delivered to the proper accounting officer of the Treasury Department of the United States, by whom it was duly audited and the balance due your petitioner certified and transmitted to the First Comptroller of said Department for his decision. That said Comptroller, by his statement of differences or report No. 104227, upon petitioner's said account for fees from the May 1st to June 30th, 1887, disallowed said above charges.

And your petitioner avers that said disallowances are not warranted in fact or in law, but that the items and amounts of said charges were just and lawful.

Amongst other causes assigned for said disallowances were the following:

(1) "Charges for more than one case against Sloane, Sullivan, Davis et al. Under section 5440, disallowed. There is no good reason for not joining these cases. There might be any number of indictments found against each of these defendants, but there would be no need for so many cases. Was not the conspiracy a general one? And would any court dismiss all but one action? If the defendant should get the full penalty under each case, it would amount to two lives? It would seem like imposing a sentence to be worked out in the future life. 25 cases, $73.90.

(6) Charges for more than one acknowledgement for each bond disallowed. As there is no acknowledg'ent known in criminal practice, if the statute gives anything, it is probably a fee in the nature of an acceptance or approval by the court, which is a single act, $6.7. 5."

And your petitioner avers that there was and is good cause for not joining said cases, to wit: that such joining was unauthorized. The different cases related to different and distinct acts, at different times and places, and about different and distinct matters and things, having no connection with each other, and with different persons as defendants and witnesses. That whatever would or might have been elsewhere, courts in Alabama do not dismiss a large number of indictments against any person for no other reason than that another indictment might yet remain upon which the prisoner, if agreeable, could be tried for some like or unlike offence. The pardoning power being placed only in the executive.

And petitioner avers that, according to the usual mode of procedure against offenders in the State of Alabama, which is the law governing the practice before commissioners, the only limitation upon the number of

criminal prosecutions against any person is found in the acts or omissions of the accused to violate the law. That instances have not been infrequent where persons have been under indictments in such number that the aggregate punishments would exceed the terms of their natural lives. Petitioner refers to the case of a former treasurer of the State of Alabama, who is now in the jail of Montgomery County, under, as petitioner is informed, thirty-nine indictments for embezzlement, including two upon which he has recently been tried, convicted, and sentenced to ten years' imprisonment, for which the total punishment might be nearly or quite four hundred years. Said case was prosecuted by the present and
18 a former attorney-general of the State and defended by the ex-attorney-general of the so-called Confederate States, yet petitioner is informed that it was not questioned, but the prisoner might have been additionally indicted for other embezzlements. Petitioner also refers to the prosecution in the United States court for this district of a former marshal of the United States for making false accounts. The accused was defended by present justices of the supreme court of Alabama and of one of the Territories of the United States, and was prosecuted by an ex-chief justice of Alabama, who was allowed by the last Congrees of the United States payment for 44 cases, involving several hundred years of imprisonment. Yet, although the numbers of dollars attacked in said accounts was claimed to have been less than the number of indictments, it was held that the accused could be indicted for each and every offence charged to have been committed by him.

Petitioner submits that the rule is as laid down by the established practice of courts, and by Congrees and the legislature of States, and not by the dicta of the Comptroller of the Treasury, a mere accounting officer, which stands alone amongst written commentaries upon criminal procedure. Petitioner denies that the proceedings before him have any further effect than to bring the accused before the proper courts of the district for prosecution and trial, with the result or sentence of which he is not chargeable or connected, but he respectfully and reverently avers that it is the prevailing belief in this district that the unexecuted portions of sentences for crimes are "worked out in the future life."

But, besides this, petitioner especially avers that in each an' every of the cases in which his charges were objected to as aforesaid, the United States attorney for this district was instructed by the honorable the Attorney-General of the United States, in compliance with the recom'endation of the honorable the Secretary of the Interior, based upon the request of the honorable Commissioner of the General Land Office, to institute said proceedings, and they were so, as aforesaid, instituted under the immediate supervision of said district attorney, and the complaints were submitted to and approved by him, and warrants directed to issue accordingly. Further, that said warrants, in each case, were sworn out by a special agent of the General Land Office, who acted under special instructions of the said Commissioner, and the same agent, the Comptroller notwithstanding, has been instructed further to institute other criminal proceedings against the same persons, under other sections of the Revised Statutes, for other offences charged to have been committed in or by the same acts. Petitioner says that his action in the premises was fully sustained and indorsed by the last grand jury of said circuit court, as witness the indictments of

said persons, but without this petitioner avers and submits for the decision of this honorable court that the action of the said district attorney, Commissioner of the General Land Office, Secretary of the Interior, and Attorney-General, and of this petitioner thereunder, was st'ictly under the letter of the law governing the same, and warranted, proper, and necessary in the due administration of justice.

And petitioner shows that his said appointment was, and is, as a commissioner under the laws of the United States, to "take acknowledg'ents of bail," and that the "acknowledgements of bail taken by him had the same effect as if taken before a "judge of the circuit court." That under the laws of the State of Alabama a recognizance in a criminal proce'ding before a commissioner is "an acknowledgement by the accused and his surities of indebtedness" to the United States, and that under the
19 laws of said State of Alabama, as declared in its statutes, and by its supreme court for more than thirty years, only "lunatics, married women, and infants" are exempt from "executing and acknowledgeing recognizances of bail" in criminal cases. Petitioner avers that no one of the accused persons, in the cases herein above charged, were excepted from the operations of the general law governing arrest and bail.

And petitioner avers that each and all of the acknowledgements of bail charged were duly taken by him under and by virtue of, and in conformity to, the laws authorizing and requiring such ackno'ledgements, and that the principals and surit'es in each recognizance, "duly acknowlegged themselves to owe the United States" the several sums respectively named, and the making and executing of said recognizances respectively, and the surities; further, that they justified in the said sums wherein in said account and in this suit charged as aforesaid.

And petitioner avers that *that* complaints were duly made to him of all of the several violations of law, and against the persons charged, concerning which the said fees were so charged and demanded, and that it thereupon became and was his duty, by virtue of his oath of office under section 1014 of the Revised Statutes of the United States, "agreeably to the usual mode of process against offenders in the State of Alabama," and in conformity with article 1, chapter 4, Title III, of the Code of Alabama, "to examine said complainants and witnesses on oath, and to take their said depositions in writing, and to cause them to be subscribed by the persons making them," and to perform the other services herein set forth and charged.

And your petitioner further avers that he was particular'y required by said section 1014 of the Revised Statutes of the United States to take and return into the clerk's office of the circuit court of the United States for the middle district of Alabama, the court having by law cognizance of the offences with which said persons were charged, "the recognizances of the witnesses for their appearance to testify in the case" and each of the cases where such items of services are herein charged.

The aggregate sum due petitioner from the United States for the services herein above enumerated is two hunderd and thirteen dollars and forty-five cents, as follows, for—

121 complaints, at 15 c. per folio	$87.30
28 warrants and filing same, at 1.25	35.00
28 subpœnas and entering and filing same, at 50 c	14.00

12 oaths to witnesses, at 10 c	$1.20
1 per diem on hearing of criminal charge, $5.00	5.00
39 bonds, at 15 c. per folio, and 25 c. for acknowledgements	15.80
44 pay-rolls, at 10 c. per folio	7.10
112 certificates of proceedings, at 15 c. per folio	48.00
	213.45

And petitioner further avers that no part of the same has been paid to him nor to any person for him, nor has any part of the same been allowed to him in any way as a credit or offset by any officer of the Department of the United Sta'es, and that the whole sum is now due and unpaid.

Your petitioner shows that no part of the claim herein sued has been heard and determined, nor has heretofore been rejected or reported on adversely by any court, department, or commission authorized to hear and determine the same.

Your petitioner further shows that no assig'ment or transfer of said claim, or any part thereof, has been made by him, and that he is the legal owner thereof.

And petitioner solemnly swears that he will support and defend the Constitution of the United States against all enemies, foreign and
20 domestic; that he will bear true faith and allegiance to the same; that he takes this obligation freely, without any mental reservation or purpose of evasion.

Wherefore your petitioner prays judgment against the d'fendant for two hundred and thirteen dollars and forty-five cents ($213.45).

ROBERT BARBER,
Petitioner.

GEORGE H. PATRICK,
Attorney for Petitioner.

UNITED STATES OF AMERICA,
Middle District of Alabama:

Before me, Bushrod W. Bell, a commissioner of the circuit court of the United States for the middle district of Alabama, on the 20th day of September, A. D. 1887, at Montgomery, in said district and State, personally appeared Robert Barber, to me well known, who, being first duly sworn according to law, deposes and says that he is the petitioner named in the foregoing petition, and that he is justly entitled to the amount therein claimed from the United States, after deducting all just credits and offsets, and that the facts therein stated are true to the best of his knowledge and belief.

[SEAL.]

B. W. BELL,
Commissioner Circuit Court of the United States for the Middle District of Alabama.

Filed September 20th, 1887.

J. W. DIMMICK,
Clerk.

348. *Affidavit of service upon dist. att'y and Att'y Gen'l U. S.*

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER
against
THE UNITED STATES. } No. 348. Filed June 24, 1887.

Before me, Joseph W. Dimmick, clerk of the United States district court in and for the middle district of Alabama, personally appeared Robert Barber, the petitioner in the above-entitled cause, who is well known to me, and who, being duly sworn according to law says: On the 25th day of June, A. D. 1887, I personally mailed a copy of the petition filed by me against the United States, as aforesaid, by registered letter to the Attorney-General of the United States at Washington, D. C., and I attach hereto the original receipt for said letter of the postmaster at Montgomery, Alabama, the place where said letter was mailed.

On the 28th day of June, A. D. 1887, I personally served a copy of said petition upon William H. Denson, esquire, United States attorney for the northern and middle districts of Alabama, by delivering to and leaving with him a true, full, and complete copy thereof, at Montgomery, Alabama. And further he saith not.

ROBERT BARBER.

Sworn to and subscribed before me at Montgomery, Alabama, this 28th day of June, A. D. 1887.

J. W. DIMMICK,
Clerk.

Registry receipt.

Post-office at Montgomery, Alabama, Jun. 25, 1887.

Registered letter No. 934. Received of Robert Barber 1 letter addressed to Attorney-Gen'l of the U. S., Washington, D. C.

G. C. CLISBY.
T.

Filed 28th day of June, 1887.

J. W. DIMMICK,
Clerk.

21 351. *Affidavit & proof of* of *service upon U. S. att'y & Att'y-Gen'l U. S.*

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER
against
THE UNITED STATES. } No. 351. Filed September 3rd, 1887.

Before me, Joseph W. Dimmick, clerk of the district court of the United States in and for the middle district of Alabama, personally appeared

Robert Barber, the petitioner in the above-entitled cause, who is well known to me, and who, being duly sworn according to law, on oath says:

"On the sixth day of September, A. D. 1887, I served a copy of the petition filed by me against the United States, as aforesaid, upon William H. Denson, esquire, United States attorney for the northern and middle districts of Alabama, by personally delivering to and leaving with him a true, full, and complete copy thereof, at Birmingham, Alabama."

"On the sixth day of September, A. D. 1887, I personally mailed a copy of said petition filed herein, as aforesaid, by registered letter to the Attorney-General of the United States at Washington, D. C., and I attach hereto the original receipt for said letter of the postmaster at Montgomery, Alabama, the place where said letter was mailed, bearing even date therewith, together with the registry return receipt for said letter, signed for said Attorney-General at the post-office at Washington, D. C., and remailed to affiant on the 10th day of September, 1887."

And further he saith not.

ROBERT BARBER,
Petitioner.

Sworn to and subscribed before me at Montgomery, Alabama, on the 13th day of September, 1887, by Robert Barber, to me known.

JOHN M. SAVAGE,
Deputy Clerk of the District Court of the United States, for the Middle District of Alabama.

Registry receipt.

Post-office at Montgomery, Alabama, Sept. 6, 1887.

Registered letter No. 694. Received of Robert Barber 1 letter addressed to A. H. Garland, Washington, D. C.

C. G. CLISBY.
T.

Registry return receipt sent Sept. 6th, 1887.

Reg. No. 694 from post-office at Montgomery, Ala. Registered letter addressed to A. H. Garland, Washington, D. C. Received the above described letter. A. H. Garland, per J. J. Haney. Post-office Department at Washington, D. C., Sept. 10, 1887. Return to Robert Barber, post-office at Montgomery, county of Montgomery, State of Alabama.

Filed September 13th, 1887.

J. W. DIMMICK,
Clerk.

353. *Affidavit of service of copy of petition on dist. att'y & Att'y Gen'l.*

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER *against* THE UNITED STATES. } No. 353. Filed Sept. 20th, 1887.

Before me, Joseph W. Dimmick, clerk of the district court of the United States for the middle district of Alabama, personally appeared Robert

Barber, the petitioner in the above-entitled cause, who is well known to me, and who, being duly sworn according to law, on oath says:

"On the 22nd day of September, 1887, I served a copy of the
22 petition filed by me against the United States, as aforesaid, upon William H. Densen, esquire, United States attorney for the middle and northern district of Alabama, by personally delivering to and leaving with him a true, full, and complete copy thereof, at Montgomery, Alabama.

"On the 20th day of September, 1887, I personally mailed a copy of said petition filed as aforesaid, by registered letter, to the Attorney-General of the United States, at Washington, D. C., and I attach hereto the original receipt of the postmaster at Montgomery, Alabama, for said letter, bearing even date therewith, together with the registry return receipt for said letter signed for said Attorney-General at the post-office at Washington, D. C., and remailed to affiant on the 26th day of September, 1887."

And further saith not.

ROBERT BARBER,
Petitioner.

Sworn to and subscribed before me, at Montgomery, Alabama, on the twenty-ninth day of September, 1887, by Robert Barber.

J. W. DIMMICK,
Clerk U. S. District Court, Mid. Dist. of Alabama.

Registry receipt.

Post-office at Montgomery, Ala., Sept. 22, 1887. Registered letter No. 872. Received of Robert Barber 1 letter, addressed to A. H. Garland, Att'y Gen'l, Washington, D. C.

G. C. CLISBY,
P. M.

Registry return receipt.

Sent September 22, 1887, from Montgomery, Ala., Reg. No. 872, registered letter addressed to A. H. Garland, Washington, D. C.

Received the above-described letter, 11692. A. H. Garland, per J. J. Haney.

Post-office Department, Washington, D. C., Sept. 26th, 1887, return to Robert Barber.

Post-office at Montgomery, county of Montgomery, State of Alabama. Filed September 28th, 1887.

J. W. DIMMICK,
Clerk.

Nos. 348, 351, and 353. *Motion of U. S. att'y to consolidate.*

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER
against
THE UNITED STATES. } Number 348, 351, and 353.

Now comes George F. Moore, assistant district attorney, who appears for the United States, and moves the court to consolidate the cases num-

bered 348, 351, and 353 on the docket of the district court of the United States for the middle district of Alabama, wherein Robert Barber is plaintiff and the United States is defendant, and that the same to be tried together as one case, viz, No. 351, on the ground that the parties to each of said suits are the same, that the character of the demands sued for in each case is the same, and that the costs are hereby lessened in the event of recovery against the defendant.

GEORGE F. MOORE,
Assistant District Attorney.

Petitioner consents.

GEORGE H. PATRICK,
Attorney for petitioner.

Filed the 22nd day of November, 1887.

J. W. DIMMICK,
Clerk.

23 #351. *Demurrer.*

In the district court of the United States for the middle district of Alabama.

ROBERT BARBER *against* THE UNITED STATES. } No. 351, with which are consolidated Nos. 348 and 353.

Now comes George F. Moore, assistant district attorney, who appears for the United States, and demurs to the complaint or petition in said above-entitled cause and for causes of demurrer thereto assigns the following, viz:

1. For that the said petition or complaint shows on its face that said accounts have been adjusted by the First Comptroller of the United States Treasury and numerous items therein have been disallowed by said Comptroller.

2. For that numerous items in said accounts are shown by the petitioner to have been disallowed by the accounting officers of the Government.

3. For that the petition shows on its face the reason that induced the said First Comptroller of the Treasury to disallow numerous items therein, which said reasons are sufficient in law to sustain the action of said First Comptroller.

GEORGE F. MOORE,
Assistant U. S. Attorney.

Petitioner joins.

GEORGE H. PATRICK,
Attorney for Petitioner.

Filed 22nd day of November, 1887.

J. W. DIMMICK,
Clerk.

Statement of account 101262.

Statement of the account of Robert Barber, U. S. commissioner for the middle district of Alabama, fiscal year 1887 (copy), No. 101262.

FIRST COMPTROLLER'S OFFICE,
DIVISION OF JUDICIAL ACCOUNTS.

(Form 83.)

Account of Robert Barber, commissioner for the middle district of Alabama, for fees from July 1 to October 31, '86.

Amount claimed by	$74.75
Amount found due per Treasury statement	34.25
Difference	40.50

Arising as follows:

Item No. 1. From evidence taken by special examiners, now in this office, letters of District Attorney Denson, and the various accounts of commissioners in Alabama, it appears that much needless litigation is had. The practice of taking depositions upon which to ground complaints, on which warrants are issued at the pleasure and convenience of the commissioner, is in the nature of champetry and all charges for such depositions are disallowed	$40.00
2. Charges for returns on subpœnas in cases in which the warrant was not served are disallowed because no return is necessary after return of warrant, and should not be made before the return of the warrant in any case. Exact dates should be given if the issue and return of every process	.50
	40.50

Filed November 23rd, 1887.

J. W. DIMMICK,
Clerk.

24 *Statement of account* 102100.

Statement of account of Robert Barber, commissioner for the middle district of Alabama, fiscal year 1887 (copy), No. 102100.

FIRST COMPTROLLERS OFFICE,
DIVISION OF JUDICIAL ACCOUNTS.

(Form 83.)

Account of Robert Barber, commissioner for the middle district of Alabama, for fees from January 1 to Feb. 28, '87:

Amount claimed by commissioner	$238.40
Amount found due per Treasury statement	$197.55
Difference	$40.85

Statement of account 102100—Continued.

Arising as follows:

Item No. 1.	Charges for taking depositions upon which to ground compaillaints disallowed. See item 1, Rept., 101262	$15.60
2.	Charges for recognizances disallowed. The evidence taken by special examiners and letters of District Attorney Denson show that *the* these recognizances as a rule are worthless. The same person is often under numerous recognizances to appear as a defendant and a witness at a certain term of court. There is no other place in the United States so given to put witnesses under bond, and probably none where the alleged criminal attend so regularly, as if by instinct or force of habit, as in the State of Alabama	$25.25
		$40.85

Filed November 23rd, 1887.

J. W. DIMMICK,
Clerk.

Statement of account 103246.

Statement of the account of Robert Barber, U. S. com'r for the n. dist. of Ala., fiscal year 1887 (copy) No. 103246.

FIRST COMPTROLLER'S OFFICE,
DIVISION OF JUDICIAL ACCOUNTS.

(Form 83.)

Account of Robert Barber, U. S. commissioner for the m. district of Ala., for fees from March 1 to April 30, 1887:

Amount claimed by commissioner	$563.70
Amount found due per Treasury statement	$269.70
Difference	$294.00

Arising as follows:

Item No. 1.	All charges in excess of three folios for drawing complaint, and one oath therdto, disallowed. It has been explained that depositions upon which to ground complaint means complaint. Everything should be called by its correct name and in the recognized legal meaning. If, in rare cases, it is shown that the complaint could not be drawn in 3 folios, such cases shall receive special attention & more may be allowed	$22.05
2.	All charges for recognizances in excess of 3 folios for drawing them disallowed	$7.50
3.	All charges in excess of 2 folios, 30 c. for certificate of attendance of witnesses, and one copy, 20 c., disallowed	$7.40
4.	Charges in excess of 60 c. for transcript of proceedings disallowed. This charges assumes so many differ'nt names and varies so from 2 to several more folios that it is difficult to dertermine exactly what is done, and by what authority some things are done. The law upon which a charge is made should be given in each case of explanations to a suspension or a contested disallowance	$11.55
5.	Charges for recognizances of witness disallowed. See letter of claimant with ⅌c	$33.60

Statement of account 103246—Continued.

Item No. 6.	Charges for acknowledgments disallowed. No such thing in criminal practice	$14.00
25	8. In the following vouchers, all charges not disallowed or otherwise suspended are suspended until it is satisfactorily explained why two or more of the cases were not joined, or united with some other case, to wit:	
	Voucher 3; 4.35–11; 9.55–23; 4.55–35; 4.35—why not joined with vou. 2	$32.80
	Voucher 7–4.15—why not joined with voucher 6	$4.15
	Voucher 14, 9.55, 44, 9.25 & 79, 9.90—why not joined with voucher 9	$28.70
	Voucher 17—why not joined with voucher 16	$4.35
	Voucher 18—why not joined with voucher 5	$3.10
	Voucher 25—why not joined with voucher 10	$9.55
	Voucher 27, 3.90 & 28, 3.65—why not joined with vouch. 20	$7.55
	Voucher 31, 9.55; 32, 4.35; 36, 8.90; 37, 3.70; 49, 3.90; 56, 3.70; 57, 3.90—why not joined with voucher 26	$38.00
	Voucher 33, 3.90; 39, 3.90; 51, 3.70—why not joined with 21	$11.50
	Voucher 40, 9.35; 42, 4.35; 43, 4.55—why not joined 15	$18.25
	Voucher 50, 3.70; 54, 8.70—why not joined with voucher 38	$12.40
	Voucher 67, 4.55; 84, 4.55—why not joined with 66	$9.10
	Voucher 68, 3.90; 70, 4.55; 83, 3.65; 85, 4.55—why not joined with voucher 58	$16.65
	Voucher 73, 8.90—why not joined with voucher 72	$8.90
	Voucher 82, 3.90—why not joined with voucher 81	$3.90
	From which deduct	$295.00
	Error in addition voucher 25, $189.25 should be $190.25	$1.00
	Difference explained	$294.00

Filed November 23rd, 1887.

J. W. DIMMICK,
Clerk.

Statement of $\frac{a}{c}$ 104227.

Statement of the account of Robert Barber, U. S. commissioner for the middle district of Alabama, fiscal year 1887, May 1 to June 30, 1887 (copy) No. 104227.

FIRST COMPTROLLERS OFFICE,
DI'SION OF JUDICIAL ACCOUNTS.

(Form 83.)

Account of Robert Barber, U. S. commissioner for the mid. district of Alabama, for fees from May first to June 30th, 1887:

Amount claimed by commissioner	$506.30
Amount found due per Treasury statement	$292.85
Difference	$213.45

Arising as follows:

Item No. 1.	Charges for more than one case against Sloan, Sullivan, Davis, et. al., under section 5440, disallowed. There is no good reason for not joining these cases. There might be any number of indictments found against each of these defendants, but there would be no need for so many cases. Was not the conspiracy a general one? And would not any court dismiss all but one action? If the defendants should get full penalty under each case it would amount to more than two lives. It would seem like imposing a sentence to be worked out in the future life, 25 cases	$73.00

Statement of ℔ 104227—Continued.

Item No. 2.	Charges for cases against the same defendants under section 5393 disallowed. See item 1, 24 cases	$28.75
3.	Charges in excess of three folios for drawing each complaint disallowed as excessive	$55.35
4.	Charges in excess of three folios for drawing each recognizance disallowed as excessive	$5.70
5.	Charges in excess of 4 folios for transcript of proceedings disallowed as excessive	$16.80
6.	Charges for more than one acknowledgment for each bond disallowed. As there is no acknowledgment known in criminal practice, if the statute gives anything, it is probably a fee in the nature of an acceptance or approval by the court which is a single act	$6.75
	In voucher 73, per diem for May 4th is disallowed as there was no hearing	$5.00
	In the following cases the charges are disallowed because the actions were not joined. The complaints made on the same day by same complainant against defendant for the same offence, who lived at the same place:	
	Voucher 81 should have been joined with voucher 80	$4.80
	Voucher 85 should have been joined with voucher 83	$5.00
	Voucher 97 should have been joined with voucher 96	$4.20
	Voucher 107 should have been joined with voucher 106	$4.00
	Voucher 116 should have been joined with voucher 114	$3.20
26	The copies of complaints, bonds, and transcripts filed by the commissioner have been examined carefully, and after striking out the superfl'ous and redundant matter found not to exceed the *the* allowances made herein, showing difference as above	$213.45

Filed November 23rd, 1887.

J. W. DIMMICK,
Clerk.

351. *Note of testimony.*

In the district court of the United States for the *d*middle district of Alabama. November term, 1887.

ROBERT BARBER *against* THE UNITED STATES. } # 351, with which are consolidated # 348 and # 353.

Note of testimony on trial of case November 23rd, 1887.

(1) Robert Barber, petitioner, examined in open court by plaintiff.
(2) Original petition, # 348, offered by plaintiff.
(3) Original petition, # 351, offered by plaintiff.
(4) Original petition, # 353, offered by plaintiff.
(5) Affidavit of service in case # 348, offered by plaintiff.
(6) Affidavit of service in case # 351, offered by plaintiff.
(7) Affidavit of service in case # 353, offered by plaintiff.
(8) Bill of particulars in case # 351 (the original account approved June 28th, 1887), offered by plaintiff.
(9) Comptroller's report # 101,262, offered by plaintiff.
(10) Comptroller's report # 102,100, offered by plaintiff.
(11) Comptroller's repoet # 103,246, offered by plaintiff.
(12) Comptroller's report # 104,227, offered by plaintiff.
(13) Records U. S. circuit and district courts, offered by plaintiff.
(14) Records of Commissioner Barber, petitioner, offered by pa*l*intiff.

Contra.

(1) Robert Barber, petitioner, cross-examined by U. S. attorney, and interrogated by the court.
(2) Comptroller's report # 101,262, offered by defendant.
(3) Comptroller's report # 102,100, offered by defendant.
(4) Comptroller's report # 103,246, offered by defendant.
(5) Comptrollere's report # 104,227, offered by defendant.

J. W. DIMMICK,
Clerk.

We agree that the above is a correct note of the testimony offered on trial.

GEORGE F. MOORE,
Assistant U. S. Attorney.
GEORGE H. PATRICK,
Plaintiff's Attorney.

Filed November 23rd, 1887.

J. W. DIMMICK,
Clerk.

351. *As consolidated. Findings of fact and conclusion of law.*

In the district court of the United States for the middle district of Alabama. November term, 1887.

ROBERT BARBER *against* THE UNITED STATES. } Case # 351, as consolidated.

# 348, filed June 24, 1887	$80. 85
# 351, filed September 3rd, 1887	$701. 05
# 353, filed September 10, 1887	$213. 45
	$995. 35

This case came on to be heard before the district court of the United States in and for the middle district of Alabama, the Hon. John Bruce presiding, and due and legal proof of service upon the defendant,
27 as required by law, having been made and filed in said case, the defendant, by George F. Moore, esquire, assistant attorney of the United States for said district, appeared and moves, in writing, to consolidate cases numbered 348 and 353 into case numbered 351, between the same parties, for reasons which are set out in said motion on file; and petitioner consenting thereto, said cases were thereupon ordered by the court to be, and they were consolidated accordingly.

Thereupon said defendant, by attorney aforesaid, demurred, in writing, to the petition in said case as consolidated, as is shown by the records of said case, and said demurrer was argued by counsel and, being understood by the court, it was considered that the same be, and it was, in all things, overruled and denied; and the defendant, making no further or other de-

fense as to the actual performance of the *the* services as charged, the petitioner introduced evidence in support of the allegations of said petition, as consolidated, and his witnesses were further examined by the defendant and by the court, and the said claims, accounts, and demands sued upon having been established by proof satisfactory to the court, upon the evidence, the court finds the facts to be as follows:

FINDINGS OF FACT.

(1) The petitioner was, on the 29th day of December, 1881, and continuously thereafter, until and including the *the* 17th day of September, 1887, a commissioner of the circuit court of the United States in and for the middle district of Alabama, duly appointed, qualified, and acting, and entitled to the fees and compensation provided by law for services rendered by him as such commissioner.

(2) Said petitioner, as such commissioner, actually and necessarily performed each and all of the services stated & charged in the petition in this case, as consolidated, for and on behalf and at the instance and request of the United States, and his accounts containing said charges were duly approved by the proper court of the United States, as required by law.

(3) The amounts respectively charged in said accounts and in the petition in this case as consolidated, were the legal fees and charges authorized by law, and petitioner, as such commissioner, was entitled to demand and receive from and to be paid by the defendant the several sums set forth and charged for the said services performed by him as aforesaid, and the same are now unpaid and due and owing to said petitioner.

(4) The objections of the First Comptroller to the allowance of such of the said accounts as were presented to and passed upon by the accounting officers of the Treasury Depatment of the United States are not sustained by evidence.

CONCLUSION OF LAW.

Upon the foregoing facts the court finds, as conclusion of law, that the petitioner, Robert Barber, recover of the defendant, The United States, the sum *sum* of nine hundred and ninety-five dollars and thirty-five cents ($995.35), with interest thereon from the date of the judgment herein at the rate of four per centum per annum until the time when an appropriation shall be made for the payment thereof, together with the costs of this suit from the time of joining issue upon the right of the plaintiff to recover, now allowed and taxed at sixty dollars and seventy cents ($60.70).

In open court, at Montgomery, Alabama, November 23rd, 1887.

By the court.

JOHN BRUCE,
District Judge of the United States for the Northern and Middle Districts of Alabama, presiding.

Filed November 25, 1887.

J. W. DIMMICK,
Clerk.

28 # 351. *Opinion of Hon. Jno. Bruce, Dist. Judge.*

In the district court of the United States for the middle district of Alabama. November term, 1887.

ROBERT BARBER *against* THE UNITED STATES. } # 351, with which are consolidated # 342 and # 353.

Heard upon demurrer to the petition of plaintiff, and upon the merits.

Mr. Geo. F. Moore, assistant U. S. attorney, for defendant, Mr. Geo. H. Patrick, for plaintiff.

BRUCE, J. This is a suit brought under the recent act of Congress, approved March 3rd, 1887.

The complainant is a commissioner of the circuit court of the United States for the middle district of Alabama, and claims that the amount sued for is due to him for services rendered by him as commissioner for and on behalf of the United States.

He charges that the amount sued for was included in an account which, as such commissioner, he made against the United States, and which was verified by oath and was duly presented to the district court of the United States for this district for approval, and that such account was duly approved by the court and transmitted to the proper accounting officer at Washington and *and* that the First Comptroller of the Treasury Department disallowed a portion of his account so transmitted, as per his statement of differences, which are submitted in the evidence in the cause.

To the petition or complaint the district attorney of the United States for this middle district of Alabama interposes a demurrer, and says that said accounts have been adjusted by the First Comptroller of the United States Treasury, and that the reasons that induced the First Comptroller to disallow numerous items in said accounts are sufficient in law to sustain his action.

It is not really claimed, and it cannot be maintained, that there is anything in the action of the First Comptroller on the accounts in question, which is in the nature of a bar to this suit. His action is not like the action of a court, and there is no element of res adjudicata in the action of an accounting or administrative officer, upon public accounts.

The demurrer herein goes further, and brings up the sufficiency of the reasons given by the First Comptroller, upon which he bases his action in disallowing the accounts now in suit.

Some of the objections on which are based disallowances are of such a general character that it is difficult to consider them. But the objections to accounts from March 1st to April 30th, and from May 1st to June 30th, 1887, are more specific, and one of them is to all charges in excess of 3 folios for drawing complaints and oath thereto. This objection is also made to recognizances, certificates, and transcript of proceedings. Upon the hearing, it was shown that the folios charged for were not in excess of, but were within the number of folios actually employed in the complaints and *and* proceedings objected to.

The question, then, is whether the commissioner has used unnecessary verbiage, which ought not to have been employed, and was mere surplusage to increase fees, or the contrary.

It is evident, at a glance, that no very definite rule can be made
29 on this subject, for the length of complaints, for instance, will depend upon the nature of the offense charged, and in a matter of this kind the court will not consider the smallest number of words that might be used in a given case, but only if there appears to be a surplusage of words used, which can serve no useful purpose, and only add to the prolixity of the papers.

Matters of this kind must come properly under the notice of the district attorney, and when he examines the accounts, as in these cases he does, and does not find the papers—the forms for which in many cases were prepared under his direction—liable to this objection, the court will not be swift to say that the papers might have been condensed and more brevity used.

The prudent and careful administration of the criminal law does not admit of the application of an unbending rule of brevity on this subject, and while possibly more brevity might have been sufficient in given cases, yet the court, in this case, does not find the papers obnoxious to the objection made.

The next objection is charges for more than one case against the same party for violation of the same section of Revised Statutes.

When cases may properly be joined or not is a question of law, the decision of which belongs more properly to a court than to an accounting officer of the Treasury; indeed, it could only be in a very extraordinary and manifest case of abuse in which an accounting officer would be justified in making any question at all in a matter of that kind. It is shown to the court, that in the cases in question the commissioner acted under the instructions of the district attorney for the middle district of Alabama, and the warrants were directed by him to be issued; and under these circumstances, the accounting officer is not in a position to disallow the fees of the commissioner on the ground stated.

The remaining objection is to the charge for acknowledgments of bonds. The Comptroller's objection is two-fold: That acknowledgments of bonds in criminal cases is unauthorized, and that one acknowledgment should answer for all the recognizors to the same instrument. On the very face of the matter, if an offender is to be admitted to bail at all, there must be some acknowledgment of such bail. The statute, in terms, requires it, and §847 Revised Statutes fixes the fee at 25c., which is the amount charged. It seems equally clear, that the bond must be acknowledged by the accused and each of his sureties; and the proof shows the acknowledgments sued for herein have been separate and not joint. Vide §1014, R. S. U. S. (Desty's Fed. Pro. (6 ed.), pp. 579–583, and cases cited. Brickell's Dig. Laws Ala. Bail in Criminal Cases, vol. 1, p. 217, §§ 125, 126, and cases cited. Brightley's Digest Laws, p. 167, § 2. §§ 627, 945, 5394, R. S. U. S.)

Judgment will therefore be enter'd in favor of the plaintiff for the sum of $995.35, with interest from date, together with the costs to be taxed.

November 23rd, 1887.

JOHN BRUCE,
Judge U. S. District Courts
for the Northern and Middle Districts of Alabama.

Filed November 23rd, 1887.

J. W. DIMMICK, *Clerk.*

30 *Final judgment*

At a district court of the United States for the middle district of Alabama, begun and holden at Montgomery, Alabama, on the first Monday in November, it being the 7th day of said month, in the year of our Lord one thousand eight hundred and eighty-seven.

Present: The Honorable John Bruce, judge of the district courts of the United States for the northern and middle *middle* districts of Alabama.

Wednesday, November 23rd, 1887, it being a day of said court, the following proceedings were had:

351. *Final judgment.*

ROBERT BARBER *against* THE UNITED STATES. } # 351, with which are consolidated # 348 and # 353.

The court, on due consideration of the premises, finds for the plaintiff and doth order, adjudge, and decree that the said Robert Barber do have and recover of and from the United States the sum of nine hundred and ninety-five dollars and thirty-five cents ($995.35), with interest thereon from the date of the judgment herein, at the rate of four per centum per annum, until the time when an appropriation shall be made for the payment thereof, together with the costs of this suit from the time of joining issue upon the right of the plaintiff to recover, now allowed and taxed at sixty dollars and seventy cents (60.70).

JOHN BRUCE,
Judge.

Filed November 25th, 1887.

J. W. DIMMICK,
Clerk.

351. *Amended note of testimony.*

In the district court of the United States for the middle district of Ala.
November term, 1887.

ROBERT BARBER *vs.* THE UNITED STATES. } # 351 as consolidated.

Amended note of testimony.

Application being now made for the allowance of an appeal, it is hereby agreed that the note of testimony in this case may be and is amended to show, in accordance with the fact, that upon the refusal of the Government to produce upon the trial, and as demanded in the petition herein, the original reports of the special examiners of the Department of Justice and letters of District Attorney Denson, referred to in Comptroller's state-

ment of differences in evidence and in the petition, the contents of said reports and letters were duly proved by the plaintiff.

GEORGE F. MOORE,
Assistant United States Attorney.

January 16th, 1888.

GEORGE H. PATRICK,
Attorney for Plaintiff.

Allowed and noted.

J. W. DIMMICK,
Clerk U. S. District Court.

31 Filed January 16th, 1888.

J. W. DIMMICK,
Clerk.

351. *Petition for appeal and order thereon.*

In the district court of the United States for the middle district of Alabama, November term, 1887.

ROBERT BARBER
vs.
THE UNITED STATES. } Case No. 351 as consolidated.

Now comes the United States by George F. Moore, assistant United States attorney for said district, by direction of the Attorney-General of the United States, and presents this petition in writing on behalf of the said defendant for the allowance of an appeal to the Supreme Court of the United States from the final judgment rendered in said cause on the 23rd day of November, 1887, and the said defendant specifies the following errors which it says were committed by said district court in its rulings, judgment, or decree in said case:

First. Said court erred in overruling the demurrer to the petition interposed by the defendant, as is shown in the record and proceedings of said district court.

Second. The court erred in the rendition of the final judgment in said case upon testimony shown in the record.

Wherefore the said defendant makes application for and gives notice of an appeal to the Supreme Court of the United States in said case.

GEORGE F. MOORE,
Assistant U. S. Attorney.

Now, on this the 16th day of January, 1888, comes into open court George F. Moore, assistant United States attorney, and having prdesented a petition in writing praying for the allowance of an appeal to the Supreme Court of the United States in the case of Robert Barber against the United States, a cause lately pending in this court, and upon consideration it is ordered by the court that the appeal prayed for be, and the same is hereby, allowed.

Plaintiff objects to the allowance of an appeal herein as unauthorized by law, and his objection being overruled, excepts thereto.

JOHN BRUCE,
Judge.

Filed in open court this 16th day of January, 1888.

J. W. DIMMICK,
Clerk.

UNITED STATES OF AMERICA,
Middle District of Alabama:

I, J. W. Dimmick, clerk of the district court of the United States for the middle district of Alabama, hereby certify that the foregoing pages, numbered from one to thirty-one, both inclusive, contain a full, true, and complete transcript of the record and proceedings in a cause lately pending in said court, wherein Robert Barber was plaintiff and The United States defendant, as the same appear of record and on file in my office as such clerk. I further certify that the bill of particulars referred to in the note of testimony on page 26, item 8, was omitted by direction of George F. Moore, esq., assistant United States attorney, as the same items are set out in the petitions filed in the case.

In testimony whereof I have hereunto set my hand and caused the seal of said court to be affixed at Montgomery, in said district, this 30th day of January, A. D. 1888.

[SEAL.]

J. W. DIMMICK,
Clerk U. S. Dist. Court, Mid. Dist. of Ala.

(Indorsement on cover:) No. 978. The United States, appellant, *vs.* Robert Barber. M. Alabama D. C. U. S. Filed February 29, 1888.

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